

**Minutes
Bar Harbor Planning Board
July 15, 2009
Council Chambers – Municipal Building
93 Cottage Street**

I. CALL TO ORDER — 6:00 p.m.

Members Present: Kevin Cochary, Chair; Buck Jardine, Secretary, Kay Stevens-Rosa, member. Also present: Anne Krieg, Planning Director; Brian Madigan, Staff Planner; Lee Bragg, Town Council

II. EXCUSED ABSENCES

Ms. Stevens-Rosa moved to excuse Ms. Williams. Mr. Jardine seconded the motion and the Board voted unanimously to approve the motion.

III. ADOPTION OF THE AGENDA

Ms. Stevens-Rosa moved to adopt the agenda as read. Mr. Jardine seconded the motion. The Board determined they would decide the length of time devoted for the review of West Street at the beginning of the hearing for this project. The Board voted unanimously to approve the motion.

IV. APPROVAL OF MINUTES

July 1, 2009 meeting

Mr. Jardine noted that the minutes should be amended to reflect his name as the new secretary.

Mr. Jardine moved to adopt the minutes with the amendments presented. Ms. Stevens-Rosa seconded the motion and the Board voted unanimously to approve the motion.

V. REGULAR BUSINESS

- A. Continuation of a Public Hearing – Zoning Map Amendment Request – Jordan-Fernald Funeral Homes**
Project Location: Eden Street, Map 103 Lot 52
Applicant: Jordan-Fernald Funeral Homes
Application: Request zoning map amendment

Ms. Stevens-Rosa recused herself for the discussion.

Mr. Moore introduced Mr. Hamilton the applicant's legal council. Mr. Moore provided an update to the project and stated that they had recently met with the Planning Department. Mr. Moore confirmed his client's objective is to work with the Planning Department in implementing the Comprehensive Plan, which defines the area in question as the Eden Street Gateway Corridor.

Mr. Hamilton stated that his client does not want to withdraw the application.

Mr. Moore acknowledged that he, and his client, were in agreement with the directive of the Staff Report. Ms. Krieg stated that staff is trying to implement the changes for the Land Use Ordinance that align with the suggestions in the Comprehensive Plan. Ms. Krieg stated a progress update for this project would be appropriate for the September 16, 2009 meeting. Ms. Krieg confirmed a neighborhood meeting would be scheduled in August to provide residents a chance to voice their opinion of what the uses in Eden Street Gateway Corridor District should include.

Mr. Cochary then opened the hearing for public comment.

Mr. Collier stated that he would like to see the project dismissed.

Ms. Krieg stated that the Future Land Use Plan defines the area in question as the Eden Street Gateway Corridor.

Several neighborhood residents spoke in opposition to the proposed map amendment. They expressed concerns with allowing uses such as restaurants in their neighborhood. Several stated that they want the application denied.

Mr. Jardine moved to continue the project hearing to the September 16, 2009 Board Meeting. Mr. Cochary seconded the motion and the Board voted unanimously to approve the motion.

B. Continuation of a Public Hearing – SP-09-02 – West Street Hotel

Project Location: West Street, Bar Harbor Tax Map 104, Lots 113-118, 122, 123, 143, 144, 146, 147, 149

Applicant: North South Construction Inc.

Application: Hotel and Accessory Uses

The Board determined they would grant the applicant an hour and a half for the review of this project.

The Board discussed the list of discussion topics provided in the Staff Report. Mr. Salvatore, the applicant, stated that he would like height to be discussed last. Ms. Stevens-Rosa affirmed, and iterated several times that she felt height is a threshold issue and should therefore be discussed first.

Mr. Moore provided a description of the updated plans and documents he submitted on Monday of this week. These items included an updated traffic study, site plan, and a new tree plan. Mr. Moore also stated the architectural plans do not clearly match the revised site plan. He also provided an explanation of how the proposed green space was altered. Mr. Moore discussed the stamped survey plan, and a memo he drafted to respond to parking concerns.

Ms. Stevens-Rosa stated she had requested a stamped survey with existing topography, which had not yet been provided.

Mr. Bragg, the Town Attorney, provided the Town's interpretation of the height. He added that when interpreting an ordinance one tries to do so in a way that provides meaning to all aspects of that ordinance.

Ms. Stevens-Rosa stated that she feels that height is a threshold issue. She stated that she was involved in the development of this ordinance, and therefore has some idea of the intent with which it was proposed. She then provided legal support to back her interpretation of the ordinance, which aligns with Mr. Bragg's opinion.

Mr. Bragg stated that if the intentions of the ordinance are not clearly spelled out, you cannot attempt to explain this intention. He added that the Board's challenge is to strive to give meaning to all provisions in the ordinance, provided that this can be done in a way that is plausible and logical.

Mr. Jardine stated that he feels the ordinance is clear and should be interpreted to mean that the only way the applicant can build anything above 35' is if there is affordable housing. He referred to the Comprehensive Plan for guidance and additional backing to his argument.

Mr. Salvatore provided a rebuttal and stated that he believes use of the word OR means a choice, not a directive. Mr. Salvatore submitted copies of the minutes which lead to the creation of the ordinance in question. The Board discussed the minutes and their content. Ms. Krieg stated that the minutes prove the Board's point and that the intent of the ordinance was to provide affordable housing.

Matt Manahan, a legal representative for the applicant, reiterated the applicant's interpretation of the ordinance. He provided further legal support to his argument and his position.

The Board and Mr. Manahan debated the applicants interpretation of the ordinance and the meaning of the words AND and OR.

John Hamer, an attorney representing David Witham, stated that he supports the Town's interpretation of the ordinance.

Mr. Cochary stated that while the Board would not vote on particular issues during the hearing process, he wanted the Board to make their opinion of the issues known to the applicant. The Board concurred with this suggestion.

Mr. Cochary stated that he would like to have 3rd party review of the site plan, architectural, and traffic plan. He also stated that he, as the chair, will try to direct the conversation to cover new ground at each meeting to provide a speedy review of the project.

Ms. Krieg asked Mr. Bragg to clarify process issues and stated she would not want see the discussion closed for the future if a member of the public, the Board, or the applicant wanted to provide comment.

The Board concurred that moving through the issues as identified in the Staff Report would be helpful in expediting their review. The Board determined that they would hear the issues in the order they are listed in the Staff Report.

Mr. Jardine moved to continue the hearing for this project to the August 5, 2009 meeting. Ms. Stevens-Rosa seconded the motion. The Board voted unanimously to approve the motion.

VI. OTHER BUSINESS

A. LUO Timeline

Ms. Krieg discussed the timeline for implementation of the remaining ordinances that need to be changed per the directives in the Comprehensive Plan. She discussed the town's vulnerability if these ordinances are not implemented within two years of the adoption of the Comprehensive Plan.

Ms. Krieg discussed the Future Land Use plan, and the requirements for District changes. She stated she wants to have the ordinances completed and implemented for the east side of Bar Harbor by June 2010. She then discussed expanding the Town Hill study area to incorporate additional areas of Route 102.

B. Discussion of Planning Board Rules and Procedures

Ms. Krieg provided an overview of the process that needs to occur when changes are made to the Rules of Procedure. The Board discussed amendments they would like to see added to their Rules of Procedure. These included: adding language that states that the Board will not review or consider documents submitted the day of a meeting. The Board also felt that the requirement for exhibit stickers could be removed. Mr. Cochary added that it would be helpful for applicants to review the rules of procedure before they came before the Board. He added that a definition for completeness and compliance review would clarify the differences in these review processes. Ms. Stevens-Rosa stated an FAQ for applicants to know how the meeting will work would be helpful. Ms. Krieg stated that Staff will make the appropriate edits for the Board's review at the next meeting.

C. Discussion of Street Ordinance.

This discussion was continued for the next meeting.

VII. PLANNING DIRECTOR'S REPORT

A. Check in on Town Hill Mini-Plan.

Ms. Krieg stated that she will be scheduling a joint meeting with the Council and the Planning Board to discuss this further.

VIII. BOARD MEMBER COMMENTS AND SUGGESTIONS FOR THE NEXT AGENDA

Mr. Cochary suggested that Mr. Madigan track ordinance language that needs to be clarified per discussions made at Planning Board meetings.

IX. ADJOURNMENT

Mr. Jardine moved to adjourn the meeting. Ms. Stevens-Rosa seconded the motion and the Board voted unanimously to approve the motion. The meeting was adjourned at 9:25pm.

Minutes prepared by Staff Planner Brian Madigan for Planning Board Review at their August 5, 2009 meeting

Signed as approved:

Clyde L. Jardine, Jr., Secretary
Planning Board, Town of Bar Harbor

Date